S.B. CIVIL WRIT PETITION NO.2371/1992.

Rajasthan State Road Transport Corporation & Anr.
Vs.
Hakam Singh (substituted by Legal Representative Smt.Pritam Kaur) & Anr.

Date of Order :: 10th September 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. B.S. Bhati, for the petitioners.
Mr. K.S. Yadav, for the respondent No.1

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BY THE COURT:

By way of this writ petition, the petitioners have challenged the award dated 11.07.1991 made by the Labour Court, Bikaner in Labour Case No.39/1986 whereby the Tribunal has answered the reference made to it on the question of legality and validity of the order of removal from service as made against the workman-driver Hakam Singh (since deceased and represented by his sole legal representative, mother). The Tribunal has proceeded to substitute the punishment of removal from service with the punishment of stoppage of four annual grade increments and has ordered reinstatement of the workman while allowing 75% back wages from the date of receiving reference but has permitted recovery of an amount of Rs.800/- towards the loss caused to the employer.

It has essentially been contended on behalf of the petitioners that having found no infirmity in the inquiry proceedings and having found the misconduct proved, the

Tribunal was not justified in interfering with the order of punishment. Learned counsel for the petitioners has relied upon the decisions of this Court in the cases of R.S.R.T.C. Vs. Habib Khan & Ors. : WLR 1993 Raj 314, R.S.R.T.C., Alwar Vs. Kailash Chand Sharma & The Judge, L.C., Bharatpur : WLR 1994 Raj 458, R.S.R.T.C. Vs. Judge, Industrial Tribunal, Bikaner : WLR 1994 Raj 401 and submitted that the workman was found guilty of grave misconduct of causing loss to the property of the petitioner-Corporation and even endangering the life of the passengers and so also the persons on the road; and there was no error on the part of the petitioners in removing him from service after due enquiry. Learned counsel further submitted with reference to the decision of the Hon'ble Supreme Court in Rajasthan State Road Transport Corporation Vs. Bhagyo Mal & Ors.: 1994 Supp (1) SCC 573 that the Tribunal was entirely unjustified in awarding back wages particularly when it has otherwise found the case fit for imposing punishment.

Learned counsel for the respondent No.1 on the other hand submitted that in the present case, the misconduct imputed upon the workman was not of grave character nor of moral turpitude. In the name of allegations of some minor accidents causing slight damage to the bus of the Corporation, the petitioners were seeking to dispense with the services of

the workman and the Tribunal has rightly interfered with the order in question. Learned counsel, of course, could not justify the award of back wages by the Tribunal in this case particularly in view of the decision of the Hon'ble Supreme Court in the case of RSRTC Vs. Bhagyo Mal & Ors. (supra) but submitted with reference to the decision of the Hon'ble Supreme Court in the case of Basudeo Tiwary Vs. Sido Kanhu University & Ors. : 1999 SCC (L&S) 174 that the workman having already expired and the only the legal heir being his old aged mother, she is entitled to reasonable relief with reference to the arrears of salary payable to the workman.

It has been pointed out during the course of submissions that though the interim stay order passed in this writ petition on 28.04.1992 was only in relation to back wages but the reinstatement as ordered by the Tribunal did not come into effect as such, and unfortunately, the workman expired on 23.07.1992.

Having given a thoughtful consideration to the rival submissions and having examined the entire record, this Court is clearly of opinion that the Tribunal cannot be faulted in interfering with the punishment awarded to the workman. The imputations against him were not of any offence of moral turpitude nor of gross dereliction of duty but were of some mistakes committed by him while driving the vehicle of the

Corporation. The Tribunal has noticed the following three points for consideration:

1. क्या दिनांक 27-1-81 को मिलिटरी छावनी के पास मिलिटरी ट्रक से वाहन को टकरा दिया जिससे वाहन में चालक साईड डेमेज हुई और 800-900 रू. का नुकसान हुआ और इस प्रकार लापरवाहीपूर्ण वाहन संचालन श्रमिक ने किया ?

2. क्या दिनांक 1-2-81 को वाहन सं. 5854 को लापरवाहीपूर्ण चलाकर एक गोधे (बैल) में दे मारा जिससे वाहन का रेड़ियेटर टूट गया ?

3. क्या दिनांक 2-2-81 को उसी वाहन को कैची से लाते वक्त लापरवाहीपूर्ण ट्रेक्टर ट्रोली में मार दिया जिससे वाहन का शीशा टूट गया ?

The Tribunal has found proved point No.1 and point No.2 against the workman but so far point No.3 is concerned, it has specifically been found that employer has failed to substantiate the same and, therefore, workman could not be held guilty therefor. It is also noticed that the inquiry officer has exonerated the workman even on charge No.1 aforesaid; and the Tribunal does not appear justified in reversing the finding on the said charge.

In the ultimate analysis, this much could be said with certainty that the only charge found proved against the workman consistently had been in relation to an accident that occurred on 01.02.1981 of hitting a cattle on the road leading

to damage to the radiator of the bus of the petitioner-Corporation. Even if charge No.1 relating to an accident with military vehicle is taken into consideration, as held proved by the Tribunal, though the workman was exonerated in that relation by the inquiry officer, yet for such charges, the punishment of removal from service had been grossly disproportionate; and rather, this Court is of the view that even the punishment as awarded by the Tribunal of stoppage of four annual increments seems to be on the higher side. Be that it may, there appears no cause or reason to interfere with the finding of the Tribunal setting aside the punishment of removal from services.

The decisions as cited by the learned counsel for the petitioner essentially relate to the cases of gross dereliction of duty and of severe misconduct; however, it cannot be laid down as an abstract proposition that the quantum of punishment cannot be interfered with by the Tribunal at all.

So far the award of back wages is concerned, in view of the decision of the Hon'ble Supreme Court in the case of Bhagyo Mal (supra) when the respondent employee is found deserving some punishment on account of his misconduct and had otherwise not worked for the period in question, he could not have been awarded back wages; and the learned counsel for the respondent could also not seriously question

such proposition. The direction in the impugned award of 75% back wages, therefore, deserves to be set aside.

The peculiar circumstances of the present case are that the workman has since expired on 23.07.1992 and is said to be survived only by his mother. In the overall circumstances of the case, when direction of reinstatement is now out of question and the award of back wages is held not justified, in the balance of equities, this Court is of opinion that interest of justice shall be served if the award of present nature is modified in relation to the ultimate relief in the manner that the respondent-workman be allowed compensation in lieu of reinstatement and the said amount of compensation may be allowed to his legal heir, mother, treating adjustment therein the amount of Rs. 800/- that was directed to be recovered from the workman.

It has been pointed out by the learned counsel for the petitioner that at the time of termination of services the workman was drawing wages at Rs.560/- per month; whereas it has been submitted by the learned counsel for the respondent that at the time of passing of the award in the year 1991, similarly situated workmen were paid wages at Rs. 1,651/- per month. The award in question was made on 11.07.1991 and the workman expired on 23.07.1992.

Having regard to the overall facts and circumstances of this case, this Court is of opinion that interest of justice shall be served if the workman is allowed the relief of compensation in lieu of reinstatement in the sum of Rs.15,000/- while modifying the direction issued by the Tribunal.

Accordingly, this writ petition succeeds to the extent indicated above and is partly allowed. While other findings recorded by the Tribunal are maintained, the award in question is modified in the manner that the workman (now through legal representative mother) is entitled for compensation in lieu of reinstatement in the sum of Rs.15,000/-. No other amount shall be payable by the petitioners to the respondent nor any other recovery shall be effected by the petitioners from the amount so payable. The amount of Rs.15,000/- be paid to the mother of the workman within a period of 30 days from today. In the circumstances of the case, there shall be no order as to costs.

(DINESH MAHESHWARI), J.

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